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Conference

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 TRAVELERS INDEMNITY COMPANY,  
4 et al.,

Plaintiffs,

v.

12 CV 3040 (KBF)

6 NORTHROP GRUMMAN CORPORATION,  
7 et al.,

8 Defendants.

9 -----x

10 New York, N.Y.  
11 October 23, 2013  
12 11:33 a.m.

Before:

13 HON. KATHERINE B. FORREST,

14 District Judge

15 APPEARANCES

16 SIMPSON THACHER & BARTLETT LLP

Attorneys for Plaintiffs

17 BY: LYNN K. NEUNER

MARY BETH FORSHAW

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Attorneys for Defendant Northrop Grumman

20 BY: GEORGIA KAZAKIS

JOHN SCANLON

21 WHITE AND WILLIAMS LLP

Attorneys for Defendant Century Indemnity Co.

22 BY: GUY A. CELLUCCI

23 SHANE R. HESKIN

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1 (Case called)

2 THE COURT: All right. Good morning. I feel like I'm  
3 living in a world of Travelers right now because down at my  
4 desk I have all of the argued motions and I shall say deeply in  
5 the process of sorting through all of it and typing away. And  
6 all I can say is there are so many declarations now that have  
7 so many different exhibits attached that it's like hunting and  
8 pecking. But we're getting there.

9 And the I briefs are very helpful in that regard, so I  
10 thank you, Ms. Kazakis. I'm not sure if you guys also handed  
11 them in, but I got the whole reconsideration motion on one  
12 disk.

13 We're here because you folks, I guess Mr. Cellucci  
14 drew the short straw and asked for an extension and also wanted  
15 to basically some -- to push the trial and also for some  
16 adjustments to the expert dates. I couldn't tell from the  
17 letter whether there's a difference of view on the expert  
18 dates. It seemed that all parties agreed the trial should be  
19 pushed a little bit.

20 MR. CELLUCI: Yes, your Honor. I'll let Ms. Forshaw  
21 go.

22 MS. FORSHAW: We actually spoke. It was a collective  
23 request, maybe one of the first you've received in the case,  
24 your Honor.

25 THE COURT: And actually it was Mr. Heskin, you

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1 actually draw the shortest of the straws.

2 MS. FORSHAW: He did.

3 But this is a collective request, your Honor. There  
4 have been some hiccups in the schedule and we collectively  
5 think that a brief extension of the trial date may be in order.  
6 And let me tell you where we are because it would be helpful  
7 and give you some context.

8 We all do this very reluctantly. We have all I think  
9 it's fair to say been working very, very hard to meet your  
10 January 8 trial date.

11 You know about the Navy issue. You ordered the Navy  
12 deposition to go forward on the day the furlough started.  
13 Today was the first day we were able to speak to the Navy  
14 because Mr. Amerant was a nonessential employee and couldn't  
15 talk to us, was in danger of being imprisoned if he talked to  
16 us.

17 I'm happy to say it looks like the Navy issue has been  
18 resolved. Today Northrop Grumman indicated they will not be  
19 calling the Navy as a witness, so we don't actually in fact  
20 need to go forward with the Navy deposition.

21 THE COURT: At long last.

22 MS. FORSHAW: At long last.

23 However, because of the lingering issues about the  
24 Navy, it threw off our expert discovery schedule. We have  
25 exchanged initial reports on all of the sites other than

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1 Calverton. So ten expert reports have been exchanged -- six  
2 from Northrop Grumman, four from us. Rebuttal reports on those  
3 sites, the non-Calverton sites, by agreement will be exchanged  
4 on October 30.

5 As a result of today's news about the Navy deposition  
6 going away, the parties are discussing when Calverton reports  
7 expert disclosures will be exchanged. Our position and I  
8 believe Northrop Grumman's position, but they'll speak for  
9 themselves, is we'll make those disclosures a week from today  
10 but we have to call our experts and tell them to finalize the  
11 Calverton disclosures. So that would be on October 30.

12 Our proposal is Calverton rebuttal reports will be  
13 exchanged on November 20. And most of the experts, I believe  
14 eight of the ten are opining on Calverton as well as the other  
15 sites. We don't think it makes sense to have them sit for  
16 depositions twice. So we would propose that their depositions  
17 take place after November 20. There are one or two that may be  
18 not talking about Calverton. We'll get those out of the way in  
19 the next month.

20 So this leaves us in a position where expert  
21 depositions and discovery will unfortunately not be completed  
22 probably until I would say about on or about December 20. Our  
23 pretrial order is currently due on December 13. The trial is  
24 January 8.

25 You will be delighted to learn that there are a lot

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1 more declarations coming your way. Travelers filed summary  
2 judgment motion on the community park last week and three  
3 additional summary judgment motions on Monday -- Calverton  
4 pollution exclusion, Bethpage facility, and one combined motion  
5 on the four water district claims.

6 THE COURT: Are they all Cannella declarations No. 17,  
7 18, and 19?

8 MS. FORSHAW: Maybe there's a Maxwell, but there are  
9 no Forshaw declarations.

10 THE COURT: I got Cannella, Scanlon, Heskins.

11 MS. FORSHAW: You now know who works the later hours  
12 and who gets to go home early.

13 Those motions, we're assuming that your summary  
14 judgment schedule, the 30 day/20 day schedule which we've been  
15 following in the case will be followed in those with respect to  
16 those motions. So those motions will be fully briefed by  
17 December 13, some a few days early, but the last one will be  
18 briefed by December 13.

19 THE COURT: Have you spoken to Ms. Kazakis about that  
20 schedule?

21 MS. FORSHAW: We talked about the Southern District  
22 14-day schedule not applying.

23 THE COURT: All right. Only because there's so many  
24 of them, it just sounds like -- I want to make sure.

25 MS. KAZAKIS: We actually have some commentary on

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1 that, but we'll get to it.

2 MS. FORSHAW: That's news to me. We haven't spoken  
3 about that. But we would like those motions to obviously be  
4 briefed and heard before trial. I don't mean to be  
5 presumptuous.

6 THE COURT: They're hardly worth making if they're not  
7 resolved before trial except to educate the Court, but it's a  
8 jury trial.

9 MS. FORSHAW: We're talking this is the follow-up  
10 we've been promising you throughout the case about the  
11 pollution exclusion and notice and voluntary payments and lack  
12 of cooperation. And I think if you grant even a subset of  
13 them, the whole case goes away. If you grant a subset of them,  
14 certainly large chunks of the case go away. And it will make  
15 all of our lives much more efficient.

16 So in light of that background, the parties  
17 collectively thought that perhaps a 60-day extension of the  
18 trial date made sense. In light of the Navy development this  
19 morning, I would say we could do a 45-day extension of the  
20 trial date.

21 Obviously, your schedule is paramount. But we believe  
22 we just should have a conversation because I think we're  
23 unfortunately in this situation where the hiccups took us a  
24 little bit off schedule.

25 THE COURT: Let me hear, Ms. Kazakis, from you in

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1 terms of all of this.

2 MS. KAZAKIS: Okay. So, your Honor, I want to address  
3 two things. One is how to reunify what's become a fragmentary  
4 schedule because we still have a fragmentary schedule in the  
5 sense that we have staggered experts reports, which isn't the  
6 most efficient.

7 And Mr. Cellucci and Mr. Heskin apprised me just as we  
8 were walking in this morning another issue. It's a fact issue.  
9 It's a holdover fact issue related to the H2M deposition and  
10 document production. But what they indicated to me I think we  
11 agreed that it could very well affect expert discovery and  
12 perhaps responses to the various motions and so and then I  
13 wanted to address the summary judgment motions and the timing  
14 of that.

15 The main goal that Northrop Grumman would like to  
16 accomplish right now is to reunify the schedule and to make  
17 sure that we have the opportunity to respond to the various  
18 motions that have been filed based on a fully developed record,  
19 meaning a fully developed expert record also. The motions do  
20 have a tremendous overlap, extensive overlap with expert  
21 issues.

22 Just to give you a little bit of a preview, the  
23 insurers, I should say Travelers in particular say there are no  
24 sudden and accidental events that contributed to the  
25 contamination. Our experts disagree. They also indicate that

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1 the various waste disposal practices were inexcusable and  
2 suspected or intended. We had stated the practice is  
3 state-of-art experts who vehemently disagree with that. They  
4 also indicate that certain practices at certain times  
5 attributed to significant portions of the contamination at  
6 particular parts of the facility there are scientific issues  
7 about that.

8 And what we really want to prevent is to have briefing  
9 by seriatim submission like we did the last time where you have  
10 not only multiple declarations but multiple letters based on  
11 things that have depositions that have occurred and facts that  
12 have come out and rebuttal reports that the second rebuttal  
13 report and all that kind of stuff. We want to really avoid  
14 that.

15 So there are two avenues in our mind that will  
16 accomplish that. First of all, as far as the summary judgment  
17 motions, we think there needs to be an adjustment to the 30-day  
18 response or opposition and 20-day reply rule. Right now as it  
19 stands we would be briefing the motions without expert  
20 discovery being completed because the depositions, according to  
21 the schedule articulated right now by Ms. Forshaw, those  
22 depositions wouldn't begin until late November and, obviously,  
23 depositions matter and we're in the middle of our rebuttal  
24 reports and we indulged the Court on that.

25 We also think it would make our lives easier and be

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1 more efficient and it would be more efficient for the Court.  
2 So typically Northrop Grumman's position has been to move  
3 forward and we don't like indulging the Court on changing the  
4 rules and practices in this case, but in this case we do think  
5 it makes a whole lot of sense.

6 Secondly, as far as reunifying what has been a  
7 fragmentary schedule, remember we have a third track which is  
8 damages because the insurers indicated some surprise at our  
9 supplemental interrogatory response. The Court gave them  
10 relief until December 3 to file another damages report. We get  
11 to rebut on the 13th. And so practically speaking that that's  
12 on yet another track and that deposition will happen between  
13 the 16th and the 20th. And there are also issues there that  
14 we've vastly disagree upon.

15 So where am I getting on all this? Our proposal would  
16 be, yes, let's have our Calverton reports disclosed a week from  
17 now. That's fine. But what we would rather do is have one set  
18 of rebuttals, not two, in other words, not one set of rebuttals  
19 next week and then another set of rebuttals three weeks from  
20 the 30th and then depositions. Let's just try to get it all  
21 together because the experts are busy people and we starting to  
22 have fragmentary reports.

23 So the proposal would be let's get our Calverton  
24 reports in next week but let's have one set of rebuttals. I  
25 don't actually think we need three weeks for Calverton

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1 rebuttal. It's insurers have indicated it's a small portion of  
2 the reports. I think two weeks would be fine. Then we do  
3 depositions of the experts and after that process takes its  
4 course, we would like to submit our opposition.

5 THE COURT: How much time do you think you would need  
6 to submit your opposition?

7 MS. KAZAKIS: It depends. Of course, it's tied to  
8 when expert discovery closes. But as an example.

9 THE COURT: Just give me --

10 MS. KAZAKIS: As an example, it would be probably it  
11 would probably be a week or so after the Thanksgiving break. I  
12 think we're looking in December realistically. We're looking  
13 at mid-December and I would say mid-December.

14 I realize that pushes off their reply but, again, I  
15 think that if the goal is to have the Court assess these issues  
16 rationally and systematically and orderly, we should revert  
17 back to the order and the system of your prior orders which  
18 were predicated on sort of an orderly progression and the  
19 insurers wanted that.

20 I'm sure you remember hearing folks here discuss about  
21 how facts should happen before experts and documents should be  
22 fully disclosed before we go through depositions and so forth  
23 and so on. And so we're asking for that orderly systematic  
24 process to take place here so that we are not briefing these  
25 based on an incomplete record.

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1 THE COURT: So let me see if I make sure that I have  
2 at least what you would like to have happen in mind.

3 You would like the Calverton part to go in next week,  
4 October 30, but the other rebuttal reports hold on. Then what  
5 you would suggest is you would want to have all the rebuttal  
6 reports for the ten come in on November 20.

7 MS. KAZAKIS: That's right.

8 THE COURT: Then you would after that finish briefing  
9 summary judgment. So you don't need the depositions of the --

10 MS. KAZAKIS: We do. We want the depositions.

11 THE COURT: So that's not a mid-December reply to  
12 summary judgment or opposition. That would be a January.

13 MS. KAZAKIS: Your Honor, this might help. We sort of  
14 sketched this out.

15 THE COURT: You can hand it to my deputy.

16 MS. KAZAKIS: If, for instance, rebuttal reports were  
17 due on the 5th of November and the deadline for completing  
18 expert depositions other than damages was to be done by  
19 November 26, okay, then we would be able to oppose by early  
20 December because expert deposition other than damages would be  
21 done. Okay. So that puts you in the first week of December.

22 THE COURT: So hold on. November 20.

23 MS. KAZAKIS: That's right.

24 THE COURT: But then --

25 MS. KAZAKIS: Not November 20. If we if our Calverton

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1 reports are on the 29th of October or the 30th, which is next  
2 Wednesday.

3 THE COURT: If I look at your schedule.

4 MS. KAZAKIS: All of our rebuttals are due on the 5th  
5 of November. And by the 26th before Thanksgiving we're done  
6 with depositions, then we would say that we could oppose, for  
7 instance, the park summary judgment in the first week of  
8 December, by let's say December 4. And the other three summary  
9 judgments filed this week by the next week, December 11. And  
10 then the replies would be due in late December.

11 These are, again, this is just sketch something out.

12 THE COURT: Not on both holidays.

13 MS. FORSHAW: This is the first I've seen this.

14 MS. KAZAKIS: That's because we sketched it out in  
15 light of our conversation. I agree the holidays -- we didn't  
16 mean this to be Scrooges at all. We obviously get after  
17 Thanksgiving, we're happy to have flexibility in that. We're  
18 not insisting on these dates.

19 What I'm insisting on with the Court's indulgence is  
20 the notion that we really need the benefit of full expert  
21 discovery. There is a tremendous overlap and we would like the  
22 depositions and have the benefit of the depositions and having  
23 the benefit of whatever admissions or not we get from their  
24 people in our deposition testimony to have that before we brief  
25 our oppositions.

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1 MS. FORSHAW: Can I respond, your Honor?

2 THE COURT: Yes.

3 MS. FORSHAW: First of all, it's the first time I've  
4 seen this schedule. Let me start by saying I'm -- the experts  
5 aren't the only busy people who are involved in this case. The  
6 lawyers in this case are busy people too.

7 Several weeks ago we reached agreement that the  
8 non-Calverton expert disclosures, the rebuttal reports, would  
9 be exchanged on October 30. Many of us in this room have made  
10 arrangements to defer and schedule things in other cases on the  
11 assumption that the non-Calverton expert disclosure rebuttals  
12 would be served on October 30. I don't understand why since we  
13 reached an agreement many weeks ago that's the date that the  
14 Bethpage and other disclosure rebuttal reports would be  
15 exchanged.

16 I don't even understand why we're having a  
17 conversation about holding back those exchanges. Complicated  
18 issues -- I need to start preparing, Ms. Neuner needs to start  
19 preparing to take their six expert depositions. We want the  
20 disclosures on the dates they were promised to us with respect  
21 to the non-Calverton stuff.

22 On the Calverton stuff, we need more than two weeks to  
23 do a rebuttal report. We don't know that much about Calverton.  
24 These folks ran Calverton, had possession of the site. We need  
25 three weeks to do a rebuttal of their Calverton reports. I

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1 can't do it in two weeks. I need three weeks. Her schedule  
2 proposes four days, I'm told. I hadn't seen this before and I  
3 haven't had a chance to study it.

4 So our proposal is let's stick with our agreement  
5 which is exchange rebuttal reports on non-Calverton on  
6 October 30 so we can start sharpening our pencils and telling  
7 our librarians to collect stuff. It's complicated stuff.

8 THE COURT: I understand.

9 MS. FORSHAW: And then on Calverton --

10 THE COURT: Let's take summary judgment.

11 MS. FORSHAW: Sure. Summary judgment, the operating  
12 mantra of this case has been file summary judgment when you're  
13 ready. We took that to heart. We teed up our summary judgment  
14 motions. The idea that these folks have several months to  
15 reply to our summary judgment motions just doesn't make sense.  
16 Do a 56(d) affidavit and tell you to deny our motion because  
17 it's premature.

18 THE COURT: You don't really want that.

19 MS. FORSHAW: Fact discovery is closed.

20 THE COURT: I think what Ms. Kazakis, as I understand  
21 the argument, is that the experts will be utilized in  
22 opposition to summary judgment. For instance, sudden and  
23 accidental.

24 MS. FORSHAW: She can have them write an affidavit and  
25 tell you that I'm wrong. Her experts have already put out

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1 their initial reports -- I got those on October 9 except for  
2 Calverton -- and have her experts do a declaration which is  
3 what they would do anyway.

4 So the idea that we're going to push summary judgment  
5 off until after this protracted expert discovery means that  
6 this trial is going to get put off for months and months and  
7 months. I'm the plaintiff. We're eager to get this case  
8 going, get this case resolved. By her approach, we will be  
9 briefing summary judgment into January because it cannot be.

10 My team has worked so hard, your Honor, and we very  
11 orderly got together these summary judgment motions, again,  
12 following your suggestion in this case that you should file  
13 when you're ready. And the idea that they're going to be  
14 working over the Christmas holiday, that's not going to happen.  
15 I just can't let that happen. These folks have worked so hard.  
16 And the idea that we would be filing reply brief on December 31  
17 is just not fair.

18 Our motions are on file, out, ready to go. These  
19 folks, if they want 45 days to respond, okay. The rules say  
20 14. We agreed 30. Under your rules in this case, if they want  
21 more time, great. But the idea that we're just going to push  
22 everything off is just delay. It just doesn't make any sense.

23 THE COURT: All right. So Ms. Kazakis.

24 MS. KAZAKIS: If I may.

25 THE COURT: Then we're going to talk about my

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1 schedule.

2 MS. FORSHAW: You're the one who controls.

3 MS. KAZAKIS: And obviously providing any dates to the  
4 Court is somewhat presumptuous. It's not written in stone.  
5 It's guideline concept driven and your schedule obviously  
6 rules.

7 They're the formal plaintiff. We obviously are the  
8 plaintiff in terms of who's been out of pocket and so we have  
9 just as much of an interest, as you know from our many filings.  
10 However, we do believe just as passionately and formally that  
11 the best way to proceed is to do this on a fully developed  
12 record.

13 Century has indicated to us that they may have motions  
14 also. And one of the things that I think we need to address is  
15 some sort of final date for filing motions. I don't think  
16 we're going to escape briefing summary judgment motions, excuse  
17 me, in January. I know their team has worked hard.

18 THE COURT: Everybody, you've all been working  
19 extremely hard.

20 MS. KAZAKIS: Our intent is not to ruin someone's  
21 vacation, but we do believe.

22 THE COURT: I don't think anybody is going on  
23 vacation. I think it's a matter of taking a night or two off.

24 MS. KAZAKIS: It's undeniably true that the motions  
25 implicate expert opinions and testimony and we can submit

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1 affidavits. But I can guarantee you, you will be getting  
2 supplements after these depositions are done because things  
3 occur in depositions. It's part of the discovery process. And  
4 I believe that part of what the Court needs to consider is that  
5 I get why Travelers may have felt pressed to file the motions.

6 At that time we still had a January 8 date. And if  
7 you delay it too long and a January 8 date sticks, then it  
8 deprives the Court and them, perhaps, of a ruling, if you will.  
9 However, things have changed and we think we should deal with  
10 that change as opposed to trying to essentially will the  
11 experts away. I think -- motions briefed without experts.

12 THE COURT: I think I hear both sides and this is  
13 going to be nobody is particularly happy with the result  
14 because I'm going to have to squish things into a way that's  
15 going to work for all of us.

16 MS. KAZAKIS: Your Honor, if I may, just one  
17 additional point which I am going to interject. It is a new  
18 issue and I actually have tried to avoid this, but I just  
19 received word from our folks before we came in here that there  
20 is one other issue with the October 30 deadline for rebuttals  
21 and that is that Travelers, the insurers's experts, did not  
22 comply with the expert disclosure agreement. And in  
23 particular, there were experts who identified as documents that  
24 they relied on just a big corpus of documents. The agreement  
25 was if they had been produced to identify the Bates numbers

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1 because there are many, many, many quote duplicates that are  
2 not really duplicates. They're parts of documents. They're  
3 documents with marginalia. And my team has spent an enormous  
4 amount of time trying to deal with that.

5 Mr. Robertson, the list of documents had completely  
6 wrong Bates numbers. Mr. Scott didn't even identify Bates  
7 number documents.

8 And so I think that at this point given what I know to  
9 be the case and the fact that we just received yesterday a  
10 corrected list of the documents relied on with the appropriate  
11 Bates numbers from Mr. Robertson, I would ask release from the  
12 October 30 deadline.

13 MS. FORSHAW: I'm not sure what Ms. Kazakis is talking  
14 about.

15 MS. KAZAKIS: We've written several letters.

16 MS. FORSHAW: I think we got two letters at 11:21 last  
17 night and I haven't had a chance to read them because I was  
18 talking to the Navy this morning.

19 THE COURT: Just before you go, let me just -- because  
20 I'm of course going to map out what I need to happen. Tell me  
21 what you thought the summary judgment briefing was going to be.

22 MS. FORSHAW: I can pass up, we have a chart actually.

23 THE COURT: Was it December 13 and December 20?

24 MS. FORSHAW: December 13 was under your 30 day/20 day  
25 rule was the date that the briefing would be completed.

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1 Ms. Neuner can pass up a chart that shows you all of the  
2 motions and the due dates based on the assumption of the 30/20  
3 day rule.

4 You know, your Honor, we filed these motions after we  
5 read their initial expert reports. So we felt comfortable that  
6 actually the experts didn't raise any issues of fact because,  
7 after all, we had their expert disclosures on everything other  
8 than Calverton. So I think this whole expert thing is a side  
9 show. I wouldn't have moved. I held back until.

10 THE COURT: How much time do you think you need to  
11 reply after you get the oppositions?

12 MS. FORSHAW: Me? I think if 20 days.

13 THE COURT: I'm sorry. Let me back up. Not to the  
14 expert reports, to summary judgment, after you've received the  
15 oppositions to summary judgment.

16 MS. FORSHAW: We were assuming they would have 30 days  
17 and we would have 20 days depending on where it falls. If  
18 there's a holiday in the middle, I can't really cut back. But  
19 if there's not a holiday in the middle, I think we could  
20 potentially cut back on the 20 days but not for the Calverton  
21 facility. We've agreed to -- I'm sorry -- for the Bethpage  
22 facility.

23 We asked, as you know, for 37 pages of briefing. They  
24 said they wanted 43 pages to reply. I feel like if it's 43  
25 pages, I may need the full 20 days to reply.

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1 THE COURT: All right. Let's talk about some trial  
2 date issues. I'm just going to look at this color-coded  
3 overview of pending motions has been handed up to me.

4 MS. FORSHAW: It's a list with the dates.

5 THE COURT: That has been submitted or is about to be,  
6 I guess. Okay.

7 So here is our conundrum. We currently have a trial  
8 scheduled which is our second, which is not as many as some  
9 large complex cases go through in terms of trying to land on  
10 the right one, but we moved it from November at one point I  
11 think is what we originally had from November to January 8.  
12 And I have actually blocked time, three weeks for a jury trial  
13 for you folks. So I've got three weeks of blocked time.

14 Now, it's not that I can't use the time. I can fill  
15 it up quite easily because it's right after the holidays and so  
16 there's all kinds of things I can stick in there. But once we  
17 are off of unblocked three weeks, I run sort of a tight ship,  
18 not just with you folks but a lot of folks. So I'm always near  
19 term oriented. So a lot of my trials are also lined up. So  
20 what that means is that the next open three-week period that I  
21 could arrange would be February 18, which is not as much time  
22 as you would like.

23 MS. FORSHAW: Seems fine.

24 THE COURT: But gives you some time. To do that I  
25 have to go back and figure out how to -- and I don't think I

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1 can actually do it right now; I think I actually have to map  
2 things out on the calendar -- but it's not going to please  
3 everybody to meet a February 18 trial date.

4 The next available trial date that I have for  
5 three-week block would not be until probably the middle of May  
6 or June because I have terrorism trial that's going to go  
7 that's going to last six weeks. It starts at the end of March  
8 and it's a jury trial and then I've got some things around  
9 that.

10 So let's just say that takes up all of April and part  
11 of May we're now into before I can find three weeks for you  
12 folks.

13 MS. FORSHAW: Your Honor, I know Ms. Neuner and I have  
14 an arbitration in May and I believe Ms. Neuner has something  
15 before Judge Preska.

16 MS. NEUNER: Your Honor, we have a hard trial date of  
17 June 2 with Judge Swain.

18 THE COURT: And how long is that trial going to be?

19 MS. NEUNER: It will be five to six weeks. It's a  
20 massive 10b-5 case for Pfizer that was set last September.

21 THE COURT: That might not go. I'm not saying that  
22 for any and I'm not basing it on anything other than the words  
23 big 10b-5 publicly traded company.

24 MS. FORSHAW: She got excited there's a summary  
25 judgment motion pending.

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1 MS. NEUNER: It's definitely going.

2 THE COURT: All right.

3 MS. FORSHAW: I think February 18 is doable  
4 personally.

5 MS. KAZAKIS: Your Honor, I actually have a client  
6 issue on February. I don't think it's the 18th, but I think  
7 it's that week. That's a Tuesday I think the following week.

8 THE COURT: And by that client issue you mean they're  
9 going skiing?

10 MS. KAZAKIS: Mediation.

11 THE COURT: I don't mean that in a negative way. Some  
12 people actually do preplan a family holiday that time of year.

13 MS. KAZAKIS: Mediation, which I could try to move,  
14 but I'm not sure.

15 THE COURT: You're saying you have a client issue.

16 MS. KAZAKIS: Exactly.

17 THE COURT: You personally, not your client in this  
18 case has an issue.

19 MS. KAZAKIS: That's correct. That's another issue.  
20 The client issue, they may have an issue in February. I have  
21 to check with them. I just have a vague memory that they had  
22 an issue with being out of town. So that's a little dicey for  
23 us, unfortunately.

24 THE COURT: Well, dicey versus undoable.

25 MS. KAZAKIS: I know.

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1 THE COURT: Because I'll tell you.

2 MS. KAZAKIS: I'd have to go and call them right now  
3 to be honest.

4 THE COURT: Because one of the choices -- it sounds  
5 like what I'm not going to do is bump you folks until June or  
6 July. I'm not going to do that because it goes against  
7 everything you all have been working on and working towards and  
8 getting a resolution and at this point I don't want things to  
9 become dusty and more attenuated. I actually am learning  
10 something about all this and I want to strike while the iron is  
11 hot, get these summary judgment motions resolved. And after  
12 I'm done resolving the ones I'm writing today, the decisions,  
13 and the last period of time.

14 So otherwise I might move it a little bit but not move  
15 it as much. And so it could be earlier I'm saying if client  
16 has an issue on February 18 than February 18. But it sounds  
17 like it's not going to be a lot later.

18 I have, if I were absolutely certain that this trial  
19 were only going to go three weeks, we could maybe start on the  
20 24th of February. But the problem is I have a hard stop on the  
21 14th and we have to have the jury back and I'm worried about  
22 getting the jury back. So particularly since you are talking  
23 about all these experts, experts take a long time to get on and  
24 off the stand.

25 MS. FORSHAW: Correct.

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1 THE COURT: So and I'm speaking a little aloud here or  
2 speaking aloud here because I'm just trying to give you folks a  
3 sense of the restraints that we've got, I could -- or  
4 constraints -- I could start on February 18, which is I think  
5 the day after a holiday. I think the 17th, a Monday, is a  
6 holiday. We pick a jury on the 18th for a multi-three week or  
7 so environmental waste pollution case -- people won't be  
8 jumping at the opportunity to sit on this jury. It could take  
9 us the better part of a day to pick a jury. But we may get --  
10 you'll open that day. That would be my expectation for sure.  
11 So we can move you back.

12 All right. Even with the 18th I've got another  
13 terrorism trial that's starting on the 10th that I think is  
14 only going to go for a week. If the jury is out, I can have a  
15 jury out and then have another jury that we're picking. It's  
16 possible we could slide a couple days.

17 But, anyway, I think we're looking at February 18,  
18 folks. Otherwise I think we slip until July. So what we need  
19 to do is come up with what makes sense between now and  
20 February 18 to actually have these summary judgment motions  
21 make a difference. And, you know, we are all of us human. And  
22 so if you're looking at February 18, let's just pick some other  
23 dates that we can do from that.

24 Let's reset the trial to February 18. Ms. Kazakis,  
25 see whether you can solve your other problems so that we don't

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1 have to go earlier, and by that I mean the other issues that  
2 you've got in terms of the client, your mediation. See if you  
3 can move them. If you can't, let me know immediately when  
4 you're back at the office.

5 But that would put our final pretrial conference at  
6 lunch break the week of the 10th. Early in that week, Joe,  
7 what do we have?

8 THE DEPUTY CLERK: Tuesday, February 11 at 1 p.m.

9 THE COURT: Okay. At one. Now block out another day,  
10 block out the 12th also. Can we do that.

11 We're going to have two dates for final pretrial  
12 conferences because I anticipate you folks won't get it done in  
13 an hour and I'm likely to be on trial that week. So.

14 MS. FORSHAW: So the 11th and 12th.

15 THE COURT: 2/11 at 1 p.m. and February 12 at 1 p.m.  
16 would be two sessions for final pretrial conferences. That  
17 means that your motions in limine have to be fully briefed by  
18 2/7. And I will repeat what I hope I've already told you folks  
19 which is do one motion in limine each of you. I don't care how  
20 many pages it is, but the more pages the less -- the more I've  
21 got to read. And follow each other's numbering for your  
22 motions in limine in the opposition.

23 So number your motions. Motion in limine one, two,  
24 three, four, five, six, seven, eight, up to however many you've  
25 got, and the opposition will be insurers one, two, three, four,

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1 five, six, seven, eight. So I can take the two briefs and I  
2 can match them. It's going to be in the same order and I'll  
3 know everything you said. So if you say same reasons for  
4 motion No. 3, just say that. But then I'll have things  
5 matching and I'm only going to get a maximum of three opening  
6 motions in limine and then three opposition. And I don't do  
7 replies on motions in limine and I do them two weeks, two  
8 weeks. So you can also do one week, one week, but I'll give  
9 you two weeks two weeks.

10 I need them by the 7th, which means you folks, they  
11 have to be in my hands fully briefed by the 7th, which means  
12 they have to open on the January 27 would be the opening. And  
13 the 7th would be the -- February would be the opposition to the  
14 motions in limine.

15 Okay. So the 27th of January. 1/27 is opening MIL.  
16 Then the opposition MIL is February 7.

17 Your pretrial materials I have to have sufficiently in  
18 advance of the 11th to be able to talk to you about things like  
19 which I anticipate putting various witnesses on what I call  
20 loose clocks because my guess is that what's going to happen is  
21 you're going to come up with a long list of people that you  
22 plan on calling, both of which would take up most of the entire  
23 time and that's not going to work. We have to have enough time  
24 for to be able to cross people appropriately and everybody gets  
25 to put on the case they need to put on.

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1           So maybe you'll come up with a discussed schedule  
2 where all the witnesses get on and off the stand in three  
3 weeks, but if you don't and the time just adds up to more than  
4 six and a half hours in a day, which is how much testimony time  
5 there is in terms of the trial clock four days a week, I have  
6 to have Friday for mostly criminal matters.

7           So I do it four days a week. I run trial Monday  
8 through Thursday. You're here at nine. The jurors come in at  
9 930. Jury leaves at five. We go from 12:45 to two for lunch.  
10 Other than that I only take two short ten minute breaks -- one  
11 in the morning at about 11 a.m., one in the afternoon somewhere  
12 around 3:30.

13           And I make you call witnesses up to the end of the  
14 day. So end at 4:30, call your next witness. If they end  
15 4:45, call the next witness. At five of five, the jury gets  
16 angry. But 4:45 the jury wants somebody else on the stand  
17 because they want out of the trial.

18           And so you get about six and a half hours maximum of  
19 testimony in a given day. So that just gives you an idea of  
20 how we have to map it out. So we've got to have direct and  
21 cross and any redirect and any recross. And it's like death  
22 with a thousand cuts with you folks, not that I haven't enjoyed  
23 every minute of it, but if your letters are anything like your  
24 examinations, we'll have to draw some limits here.

25           So what I've done is loose clocks which is you'll give

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1 me something. Hopefully it will look like a real trial  
2 schedule. I'll then map out on a grid who's going to be on  
3 during what periods of time, when people are going to be  
4 direct, cross, and then limited redirect, recross for each of  
5 the witnesses and will map out to three weeks. And then we'll  
6 borrow time here and there from different witnesses. Some  
7 people are going to go faster or slower.

8 And I won't give you a hard chess clock in the  
9 beginning. What I'll do, that's why I call it a loose clock.  
10 I'm going to decide you're recidivists. If you only respond to  
11 a buzzer, at which point we go to a hard clock if you can't  
12 make it because we will have a hard stop even I think on  
13 February 18. I do have to move on.

14 MS. FORSHAW: So, your Honor, last day of trial that  
15 you're available the 7th?

16 THE COURT: Would be the week of February 18, the week  
17 of the 24th, the week of March 3. I could do it the week of  
18 the 10th, but we've got to have the jury has got to be charged  
19 and deliberating I think by the 11th.

20 MS. FORSHAW: Okay.

21 THE COURT: Otherwise we have problems because I don't  
22 know how long it will take them.

23 MS. FORSHAW: Yep.

24 THE COURT: I don't know what's going to be left. I  
25 don't know, but it could be complicated for them.

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1 MS. FORSHAW: Sure. Thank you.

2 THE COURT: So that's what I'm thinking. So if we do  
3 the final pretrial -- you folks have to give me your pretrial  
4 materials. That's what we were really aiming at. I think  
5 around the 4th of February.

6 Now, I'll tell you this now because we're sort of  
7 talking about this trial business now, but when you give me  
8 your pretrial order materials, I expect you're going to have a  
9 lot of depositions. Don't even designate from somebody you're  
10 going to call live because I won't let you read their  
11 designations in. I will let you, if it's properly  
12 designatable, 30(b)(6), something like that, allow you to go  
13 beyond the scope of a direct or a cross in order to get that  
14 in. If it's impeachment, you obviously don't need to designate  
15 it. But if it's just you want to designate somebody who's  
16 going to testify live and you know that and have a commitment,  
17 then don't bother to designate.

18 And those as to which you do designate that are  
19 properly designatable I want a transcript, full transcript of  
20 the entire deposition and then it's color-coded with -- and you  
21 can do it in magic marker, but you folks seem to be  
22 technologically savvy. I don't care what color for the person  
23 that's designating, a different color for the counter  
24 designating. And then red for whatever is objected to. Take  
25 all objections out. Don't designate objections. Just take

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1     them out. You'll have an opportunity to preserve your  
2     objection in your objections to the designations.

3             But what I want, when I say objections out, I mean  
4     objection to form, counsel colloquy, all of that should come  
5     out because if it's going to go on a video screen for any of  
6     it, then I want to make sure that I know exactly where the  
7     start and stops are.

8             So it will be color-coded. So I'll get a transcript  
9     that will be color-coded and the side-by-side with that will be  
10    usually in Excel, but I can take it in Word, a spreadsheet that  
11    will have the name of the deponent, line to, line to.

12            If there's an objection, nature of the objection  
13    hearsay, lacks foundation, clearly speculating, no firsthand  
14    knowledge, whatever it's going to be. And then another box  
15    that will have the response which is whatever your response is.  
16    And then there will another empty box for the Court's ruling.

17            And I will try to give you rulings on those at the  
18    final pretrial, but if you have eight gazillion objections to  
19    documents, I'll spend more of my time on the documents at the  
20    final pretrial than I will on the depositions and you'll get  
21    the depositions before trial so you'll know what you've got.

22            For documents, I want the same format for the exhibits  
23    which is each of them are numbered. They're all premarked.  
24    It's PX1 and DX1. And when you see each other's, I don't care  
25    if there are gaps or they skip around, only mark every document

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1 once. One of you gets to mark it.

2 If you want me to instruct the jury that the jury  
3 should draw no inference as to who's presenting a particular  
4 document, that's fine. I've done that before. But we don't  
5 want PX1 to actually be the same thing as DX128 because the  
6 jury is going to see every document once.

7 So once you see each other's, you may pull a document  
8 and then you may have a gap. Do not worry about gaps, okay,  
9 and renumbering everything. Just do it once. And so you'll  
10 have your numbered documents, PX1 through whatever, DX1 through  
11 whatever, and then you'll have the name of the document. If  
12 there's any objection, what the objection is, same thing, you  
13 know, hearsay, whatever it is. A response sufficient to allow  
14 the Court to rule.

15 And then I will give you what I call a preliminary  
16 ruling in my empty column which I will fill in which will be S  
17 or an O, sustained or overruled as to the objection. However,  
18 sometimes I can't tell precisely -- it doesn't look like  
19 there's any possible foundation here or it does look like the  
20 document is incomplete, but there may be a good response that  
21 you weren't able to quite get in in your block.

22 And so I call it preliminary because for you to  
23 preserve your evidentiary objections at trial for what I've  
24 precluded you need to reoffer it. You can offer it the morning  
25 before we go into court. That's what the 9 a.m. slot is for.

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1 So if I've precluded 20 of your most interesting documents that  
2 you really really want to have, No. 1, we can talk about you  
3 trying to fix whatever the problem is and laying a proper  
4 foundation or curing whatever the objection is or, two, if I  
5 don't think it's curable, I think it's still irrelevant or  
6 whatever the issue is, you still think you need it, you'll  
7 proffer it on the morning of a particular trial day. I then  
8 will make a confirming ruling. Okay.

9 So these objections to documents are tentative rulings  
10 to give you a sense as to what you should open on, what you  
11 should not open on, and what you're likely to be able to use.  
12 So it's much more common to have a sustained objection turned  
13 around by fixing an objection than having something I said oh,  
14 that can come in, not come in. And if you haven't objected to  
15 a document, you have waived your objection. That should not  
16 encourage you to overobject.

17 So you know if I have -- at trial I'll have all of  
18 your objections in front of me and if I say, somebody stands  
19 up, Ms. Kazakis stands up and says DX7, I move to admit. And  
20 you folks, Ms. Forshaw, haven't object and you get up and say  
21 yes, we have an objection, and there's no objection here, I'm  
22 going to overrule you.

23 MS. FORSHAW: Okay.

24 THE COURT: All right. So all that stuff will be in.  
25 You'll give me a list of the documents that are objected to and

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1 I'll get binders of the documents that are objected to only  
2 pretrial. I don't need all of your documents, okay. I only  
3 want those that are objected to.

4 I have been known when people have tried to put in  
5 over a thousand trial exhibits to throw the list back at people  
6 and say -- I'm not saying you won't have a thousand. I'm  
7 saying if you come up with what I believe in the context of the  
8 case as this then exists a number that is too large for human  
9 beings to really think is going to be used, I will tell you to  
10 take another stab at thinking about your case because I'm not  
11 going to go through 500 objections pretrial. It's neither  
12 humane nor reasonable.

13 So that gives you a sense of what I'm going to need.  
14 So that's what you're looking at, Ms. Canella, that's what  
15 you're looking at. Okay.

16 MS. FORSHAW: She's been there.

17 THE COURT: I don't know. That's between everybody  
18 who's doing what.

19 So all right. Now in terms of the other briefing, so  
20 if we're looking at February 18 and you folks need to get your  
21 pretrial materials in by the 4th, the next thing I'm going to  
22 hear is we need rulings on summary judgment in order to know  
23 whether to put in any documents on X, Y, or Z.

24 MS. FORSHAW: Right.

25 THE COURT: And we also need to know your rulings to

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1 know whether or not we have a motion in limine on X, Y, or Z.  
2 So you're going to immediately start telling me even though you  
3 want the time that you can't possibly have me ruling on summary  
4 judgment sometime before trial like, you know, the 6th because  
5 it's going to screw you all up.

6 So that means I have to have things fully briefed, I  
7 think I've got to have it fully briefed by the 10th of January.  
8 I don't think there's any way for me humanly to get through  
9 this number of motions.

10 MS. KAZAKIS: I don't think you will. 260 pages of  
11 briefing and 250 some exhibits.

12 MS. FORSHAW: Your Honor, it's the same issues:  
13 pollution exclusion, notice. I think you're pretty familiar  
14 with the legal issues.

15 THE COURT: It's going to be a lot of work. I can  
16 tell you from working on the ones I'm working on right now that  
17 just going through the documents and trying to figure out  
18 Calverton one from Scanlon 27 from Heskin 94 is, you know, see  
19 attachment D which appears four times in different -- it's a  
20 challenge.

21 So I need the briefing completed by January 10. And I  
22 think that that means that I'm going to let you folks, I'm  
23 going to give you a view and I'm going to let you folks have  
24 one more conversation now that you have these dates before I  
25 impose something.

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1           Okay. My view is that expert reports need to be in,  
2 but depositions don't need to happen before summary judgment is  
3 opposed. I think that is a fair way to split this baby which  
4 is we don't have to have the depositions and, by the way, if  
5 the person is opining on something that's not in their report,  
6 you've got a different problem on your hands.

7           So see if you can come up with what works. If not,  
8 write me a letter tomorrow saying we're still at an impasse. I  
9 still think it should be staged in this way, I still don't, and  
10 I'll just decide it. But now I've given you all these other  
11 dates. I've told you I think the report should be in but the  
12 depositions should happen afterwards. I'll decide summary  
13 judgment without the benefit of the deposition testimony.

14           Unless you folks want to agree that certain  
15 depositions, for instance, Mr. or Ms. Pollution exclusion or  
16 accidental, nonaccidental, that that deposition can and should  
17 happen earlier because it's going to be fully in.

18           So, for instance, if the rebuttal reports go in on  
19 October 30 and you can start taking expert depositions as to  
20 some but not all of these depositions, if it's one individual  
21 who's done at that point, you've got that person done and in  
22 the can and cite that person to your heart's content in your  
23 summary judgment opposition. Okay.

24           MS. FORSHAW: Okay.

25           THE COURT: So have one more conversation --

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1 MS. FORSHAW: We'll do that now.

2 THE COURT: -- about those two things. So it's really  
3 just how you want to stage the experts and how you're going to  
4 do the briefing. And if you can't agree, I will impose.

5 MS. FORSHAW: Okay.

6 MS. KAZAKIS: Your Honor, one question. If there is  
7 deposition testimony that's highly relevant, will you permit us  
8 to supplement our briefing? Because I've been in that position  
9 before.

10 THE COURT: I understand. I think in this case if I  
11 said yes to that, I can guarantee that I'll have a series of  
12 letters. I'll do with you guys which I never do with anybody  
13 else which is stop. You have gotten two or three of these  
14 enough, stop orders.

15 MS. FORSHAW: You do have a rule no reply is allowed.

16 THE COURT: I do but you know.

17 MS. KAZAKIS: That's why I asked because we have  
18 gotten some of those. On the other hand, experts have been  
19 known to be pushed back on their opinions and --

20 THE COURT: Then what I suggest is that what I had  
21 written down before when I was doing my little scratchings that  
22 because of the issue -- here it is -- of the documents and if  
23 you folks on Travelers side, on Century can help out finding  
24 some documents if your experts have just given a bunch of  
25 mishmash, I don't think that's fair. Write me a letter if

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1 somebody gives you a bunch of crap and I will tell them to put  
2 Bates numbers next to it.

3 But November 8. So here's what you should do. You  
4 should do your rebuttals by November 8. It gives you an extra  
5 week. Then the depositions should happen immediately and then  
6 that gives you plenty of time for the briefing.

7 MS. FORSHAW: Okay. We'll go talk and hopefully we  
8 can.

9 THE COURT: I think that makes sense. That way  
10 November 8, take the depositions.

11 You'll still have that one that's going to be hanging  
12 over, right?

13 MS. KAZAKIS: The damages.

14 MS. FORSHAW: There's not.

15 THE COURT: That was a different one.

16 MR. CELLUCI: Your Honor, just one other thing. We do  
17 have one minor fact issue, potential fact deposition that was  
18 alluded to by --

19 THE COURT: H2M.

20 MR. CELLUCI: Exactly, your Honor. So we're trying to  
21 work it out right now to see if they can point us to some  
22 documents to tie up the pictures we just had produced to us of  
23 the barrels and what the contents were and try to work it out.  
24 If not, we'd like to get a deposition maybe next week if we  
25 can.

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1 MS. KAZAKIS: Your Honor, if I may, sort of what we're  
2 trying to get away from. Mr. Celluci said it's a minor issue.  
3 It's actually not such a minor issue. And I won't go into it  
4 because it deals with the deep opinions of their experts. But  
5 we just we feel like Northrop feels like it's death by a  
6 thousand cuts.

7 THE COURT: So do I.

8 MS. KAZAKIS: I just want to put that on the record  
9 because those -- what they're seeking may very well have a very  
10 significant effect on expert reports and opposition.

11 THE COURT: That will be next week would be a good  
12 time then. Why don't you take it this week. Can you take it  
13 on Friday?

14 MR. CELLUCI: Your Honor, it's not within our control.  
15 H2M has to identify the person with the knowledge that can tie  
16 up what was in the barrels with the --

17 THE COURT: You guys should identify -- work with H2M.  
18 It sounds like you're go to have the deposition immediately if  
19 you're going to take it.

20 MS. KAZAKIS: Or not at all. We feel like fact  
21 discovery is ended.

22 THE COURT: Well, this is one of those situations. I  
23 strike everything I said on H2M apart from using the word H2M  
24 that I said so far. I have given no rulings on H2M.

25 Here's what I think. I have no idea what these

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1 photographs are. I don't know whether or not they were late  
2 produced, timely produced, who produced them, what they relate  
3 to. Write me a letter immediately if you guys can't figure out  
4 how to deal with H2M and you feel there is some relief because  
5 discovery is closed. So but if there's something that's good  
6 cause shown, then it's good cause shown. So I need to  
7 understand better and I don't want to understand it now.

8 MR. CELLUCI: Sure, I understand.

9 MS. KAZAKIS: I totally agree. We just that's why we  
10 want the Court's indulgence if something happens in depositions  
11 to be able to tell the Court because we feel like indulgences  
12 have been given many other ways.

13 THE COURT: I have to say it's going to be really hard  
14 to add anything, which is why the November 8 date should be the  
15 date for the expert rebuttals. Okay. That gives you relief  
16 from October 30. It's not going to stage everything as you  
17 would like it. I understand and would set a schedule normally  
18 if I could, believe you me, where everything is in a reasonable  
19 way. You're going to have this other one that's hanging out.

20 MS. FORSHAW: Your Honor, we're also going to have  
21 Calverton.

22 THE COURT: That's the one that's hanging out.

23 MS. FORSHAW: I just wanted to make sure.

24 MS. KAZAKIS: Damages is hanging out.

25 MS. FORSHAW: Damages.

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1 MS. KAZAKIS: So Calverton, we're going through a  
2 staggered schedule on that?

3 THE COURT: What you're saying is I have a choice  
4 between staggered schedule and getting additional death by a  
5 thousand cuts in January on the briefing. I choose your  
6 staggered schedule to my death.

7 MS. KAZAKIS: Rebuttals are due on the 8th. That's  
8 great.

9 THE COURT: Take the depositions.

10 MS. FORSHAW: For Bethpage.

11 MS. KAZAKIS: But Calverton, I think we just want to  
12 be clear on what the deadlines are. Their proposal is  
13 Calverton disclosures are due next week and then three weeks  
14 after that their rebuttals. They have a Calverton motion  
15 sitting out there.

16 THE COURT: But you guys are -- the one thing I  
17 haven't resolved --

18 MS. KAZAKIS: Is when the motions.

19 THE COURT: -- when the briefing is going to come in.

20 MS. KAZAKIS: I want to make that clear.

21 THE COURT: But I am resolving November 8.

22 MS. KAZAKIS: Right, okay.

23 THE COURT: And the expert schedule actually we can do  
24 it all together. November 8 is for the rebuttal for the group  
25 that's already been served. Take the depositions immediately.

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1 Start them right away. Particularly those --

2 MS. KAZAKIS: Same experts though. We don't want  
3 experts to be deposed twice.

4 THE COURT: No, but you're going to have eight of the  
5 experts done. There's got to somebody in that eight.

6 MS. FORSHAW: There's at least two.

7 MS. KAZAKIS: That's what I think Ms. Forshaw was  
8 trying to say. Eight of the ten also deal with Calverton. So  
9 if we have a staggered Calverton schedule, that means that  
10 you're going to have experts being deposed twice on what  
11 they've already submitted and then what they're submitting for  
12 Calverton.

13 THE COURT: You'll figure it out. All I'm saying  
14 is -- here's what I'm saying: After the briefing is in on  
15 January 10, no more briefing. The wall comes down. Figure out  
16 how to stage your expert disclosures, discovery, depositions in  
17 a manner that allows you to take those individual's depositions  
18 whose depositions you think you need.

19 MS. FORSHAW: Yep.

20 THE COURT: If it's a battle of the experts, then  
21 obviously there's going to be a problem with summary judgment.

22 MS. FORSHAW: Right.

23 THE COURT: Potentially, if it's just a fact question  
24 where they're battling.

25 Daubert motions. If anybody has a Daubert motion, you

DANLTRAC

Conference

1 have to have it in on the same schedule when I have summary  
2 judgment in my hands, right. I can't do it on an MIL schedule.  
3 You've got to have a Daubert in, if there's a Daubert used on  
4 summary judgment.

5 MS. KAZAKIS: You want it fully briefed by 10th.

6 THE COURT: If you're going to say this person should  
7 be precluded and it's somebody who's utilized on summary  
8 judgment, I need to preclude them or not for trial.

9 MS. FORSHAW: Got it.

10 THE COURT: Okay. Thanks. We're adjourned.